JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2004-02-12-04 / NOT PRECEDENTIAL**
ID: **MV020040**
DATE: **02-12-04**
DISPOSITION: **DENIED**
TAX TYPE: **DIESEL FUEL TAX / IFTA**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 12th day of January, 2004, the above styled and numbered cause comes on for decision pursuant to a hearing held on December 17, 2003. REGISTRANT is represented by ITS Owner. The Audit Division of the Tax Commission (hereinafter "Division") is represented by THE General Counsel's Office of the Tax Commission.

A prehearing tele-conference was held in this matter on January 16, 2003, at which conference, a discussion was had concerning Registrant's contentions with respect to the assessment in this matter. Subsequent to the prehearing tele-conference, the matter was scheduled for hearing. The hearing in this cause was held on December 17, 2003, at which hearing Registrant failed to appear.

Upon review of the file and records, including the record of the proceedings held on December 17, 2003, and the exhibits received into evidence, the undersigned finds:

1. That for the registration years 2000 and 2001, Registrant utilized the State of Oklahoma as its base jurisdiction for licensing and registering on a proportional basis one vehicle engaged in interstate commerce.

2. That the Division conducted an IRP audit for the 2001 registration year. No records were provided by Registrant. The audit write-up indicates that the IRP audit was done in conjunction with an IFTA audit and was completed by using the reported mileage from the first and second quarter of 2000, resulting in additional fees due and owing.

3. That on October 9, 2002, the Division issued a proposed assessment of additional proportional registration fees against Registrant for the 2001 registration year in the amount of $1,607.67.

4. That Registrant paid the assessment and the IRP audit became final and is not under protest.

5. That the Division conducted an IFTA audit covering the period January 1, 2000 through September 30, 2001. No records were provided by Registrant. The audit write-up indicates that Registrant was assessed at 4 AMPG and all tax paid fuel reported was disallowed, resulting in additional tax due and owing.

6. That on October 10, 2002, the Division issued a billing statement for the above-stated period in the aggregate amount of $11,021.19, consisting of diesel tax in the amount of $8,369.93, interest in the amount of $1,814.27, and penalty in the amount of $836.99.

7. That Registrant timely protested, stating he disputed the figures and needed further explanation.

8. That subsequently, Registrant provided records to the Division which resulted in a revised assessment in the aggregate amount of $1,095.37(sic), consisting of diesel tax in the amount of $1,527.17, interest in the amount of $725.63, and penalty in the amount of $33.61.

9. That by letter dated December 2, 2003, the Division notified Registrant of the revised assessment.

10. That the amount in controversy is $1,095.37.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction over the parties and subject matter of this action, 68 O.S. 2001, § 221(D) and 68 O.S. 2001, § 607(E); that a cumulative tax of 13 cents per gallon is levied on diesel fuel imported into this state in the fuel supply tanks of motor vehicles for use in propelling the vehicles on the highways for commercial purposes, 68 O.S. 1991, §§ 603.1, 604.1, 604.3, 604.5 and 604.7; that the Tax Commission has entered into the International Fuel Tax Agreement ("IFTA") with other states and provinces "to permit base state or base jurisdiction licensing of persons importing motor fuel or diesel fuel into this state and liable for the tax levied pursuant to [the Motor Fuel/Diesel Fuel Importer for Use Tax Code][1] and provide for the cooperation and assistance among the member states and provinces in the administration and collection of motor fuels consumption and use taxes", 68 O.S. 2001, § 607(E); that the provisions of the IFTA Agreement, Audit Manual, and Procedures Manual are binding upon this state as a member of the Agreement and Registrant as a licensee under the Agreement, IFTA, Articles of Agreement, R120; that as a member of the Agreement, the Tax Commission is obligated to audit its licensees on behalf of all member jurisdictions, IFTA, Articles of

[1] 8 O.S. 1991, § 601 et seq.

Agreement, R1310; that all audits conducted by members of IFTA must be in compliance with all requirements established in the Agreement, Procedures Manual and Audit Manual, IFTA, Article of Agreement, R1330; that pursuant to an audit of its licensees, a state shall emphasize an evaluation of the licensee's distance accounting system and verify that the total miles have been properly distributed to the various jurisdictions, IFTA, Audit Manual, A520; that all audits of licensees under IFTA shall be conducted on a sampling basis using the best information available to the base jurisdiction, IFTA, Audit Manual, A530; that the base jurisdiction shall determine the tax liability of the licensees for each jurisdiction on the basis of the best information available, IFTA, Articles of Agreement, R1210.200.005; that the auditor who performed this audit meets the qualifications of Oklahoma's personnel guidelines and the audit was performed with uniformity and by using a standard approach, IFTA, Audit Manual, A410, A510 and A520; that the audit was completed using Registrant's information requiring the burden of proof to be placed on Registrant, IFTA, Audit Manual, A540.200; that the audit contained sufficient documentation to support the audit findings, IFTA, Audit Manual, A670; and that Registrant has failed to come forward with any evidence to show in what respect the assessment, as revised, is erroneous, accordingly Registrant's protest to the revised assessment is denied.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is DETERMINED that the protest be denied. It is further DETERMINED that the amount in controversy, inclusive of any additional accrued and accruing interest, be fixed as the deficiency due and owing.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are not generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.